

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M. WEDNESDAY
April 24, 1996

MERIT DOCKET

95-2359. W.W. Williams Co. v. Medina Cty. Bd. of Revision.
Board of Tax Appeals, No. 94-H-669. On motion to dismiss. Motion to dismiss
sustained. Cause dismissed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ.,
concur.

Douglas, J., dissents.

95-2360. W.W. Williams Co. v. Medina Cty. Bd. of Revision.
Board of Tax Appeals, No. 94-H-668. On motion to dismiss. Motion to dismiss
sustained. Cause dismissed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ.,
concur.

Douglas, J., dissents.

96-319. State ex rel. Neal v. Ohio Adult Parole Auth.
In Mandamus. On answer of respondent. Answer treated as motion to dismiss.
Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton,
JJ., concur.

96-428. State ex rel. Lee v. Cuyahoga Cty. Court of Common Pleas.
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause
dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton,
JJ., concur.

96-441. Linton v. Ohio Adult Parole Auth.
In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton,
JJ., concur.

96-446. State ex rel. Conley v. Lorain Cty. Court of Common Pleas.
In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton,
JJ., concur.

96-453. 8 Ball Tattoo v. Bowman.

In Mandamus. On answer of respondent. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

Stratton, J., dissents and would grant the writ.

96-458. State ex rel. Collins v. Ninth Dist. Court of Appeals.

In Procedendo. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-478. State ex rel. Smith v. Curl.

In Mandamus. On answer of respondent. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-504. State ex rel. Steneart v. Bur. of Crim. Identification.

In Mandamus. On answer of respondent. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-519. Brock v. Edwards.

In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Cook and Stratton, JJ., concur.

Pfeifer, J., dissents and would grant an alternative writ.

96-585. Walls v. PW Lewis Ctr.

In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-589. State ex rel. Guess v. Judges.

In Mandamus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-590. State ex rel. Guess v. Tenth Dist. Court of Appeals.

In Mandamus and Procedendo. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-591. Strider v. Madison Corr. Inst.

In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-622. Lawson v. Fed. Correctional Inst., Inc.

In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

96-663. Pianowski v. Turner.

In Habeas Corpus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton, JJ., concur.

DISMISSALS, SUA SPONTE, NO SUBSTANTIAL
CONSTITUTIONAL QUESTION AND DISCRETIONARY
APPEALS, IF APPLICABLE, NOT ALLOWED

95-2350. Evans v. Evans.
Butler County, No. CA94-12-212.
Pfeifer, J., dissents.

95-2373. Newark Orthopedics, Inc. v. Brock.
Franklin County, No. 95APE03-246.

95-2375. McConnell v. Ohio Bur. of Emp. Serv.
Franklin County, No. 95APE03-262.
Douglas, J., dissents.

95-2407. Howard v. Catholic Social Serv. of Cuyahoga Cty.
Cuyahoga County, No. 67995.

95-2442. The Pool Man, Inc. v. Rea.
Franklin County, No. 95APG04-438.
Douglas, J., dissents.

95-2539. Haupricht v. Davis Farm Serv., Inc.
Fulton County, No. F-95-013.

95-2559. State v. Robertson.
Cuyahoga County, Nos. 67795 and 67796.

95-2565. State v. Mays.
Cuyahoga County, No. 68255.

95-2584. State v. Thomas.
Delaware County, No. 95CAA02008.

95-2586. Back v. Am. States Ins. Co.
Montgomery County, No. CA 15195.
Douglas and F.E. Sweeney, JJ., dissent.

95-2593. State v. Huckabee.
Cuyahoga County, No. 67588.

95-2595. State v. Lozada.
Cuyahoga County, No. 67147.

95-2605. State v. Carroll.
Lorain County, No. 95CA006263.

95-2609. State v. Russo.
Hamilton County, No. C-941052.

95-2610. In re Kelly.
Franklin County, No. 95APF05-613.
Moyer, C.J., and Resnick, J., dissent.

95-2619. State v. Rak.
Franklin County, No. 95APC05-600.

95-2628. Columbus Div. of Income Tax v. Mid Ohio Canopies, Inc.
Franklin County, No. 95APG06-685.
Moyer, C.J., dissents.

95-2632. Marblehead v. Menier.
Ottawa County, No. OT95036.
Douglas, J., dissents.
Resnick, J., not participating.

95-2637. State v. Little.
Cuyahoga County, No. 68003.

95-2640. State v. Greathouse.
Medina County, No. 2421-M.

95-2641. State v. Lewis.
Hamilton County, No. C-950222.

95-2643. State v. Hodges.
Seneca County, No. 13-95-16.
Douglas and Pfeifer, JJ., dissent.

95-2648. Blynn v. Blynn.
Medina County, No. 2422-M.

95-2651. State v. Martinez.
Lucas County, No. L-95-009.
Resnick, J., not participating.

95-2652. State v. Morgan.
Franklin County, No. 95APA03-382.

95-2661. State v. Swift.
Geauga County, No. 94-G-1838.

95-2669. State v. White.
Summit County, No. 16900.

96-3. Findlay v. Levy.
Hamilton County, Nos. C-930898, C-930943 and C-940142.

96-14. State v. Badley.
Cuyahoga County, No. 68349.
Douglas and F.E. Sweeney, JJ., dissent.

96-85. State v. Howard.
Seneca County, No. 13-95-38.

96-117. In re Vaughn.
Franklin County, No. 95APE05-645.
Douglas and Pfeifer, JJ., dissent.

96-479. State v. Williams.

Cuyahoga County, No. 68613.

MOTION DOCKET

85-7. State v. Williams.
Cuyahoga County, No. 47853. On motion for reconsideration under S.Ct.Prac.R.
XI(1)(B). Motion denied. On motion to set execution date. Motion granted.

95-946. State ex rel. Cleveland v. Pub. Util. Comm.
In Mandamus. On motion to set briefing schedule and on motion for oral
argument. Motions denied and the court shall proceed to judgment.
Stratton, J., not participating.

95-1274. State ex rel. Athens Cty. Bd. of Commrs. v. Bd. of Directors of the
Gallia, Jackson, Meigs, Vinton Joint Solid Waste Mgt. Dist.
Jackson County, No. 93CA730. On request for oral argument. Request denied.

95-1809. Moore v. Volvo-GM Heavy Trucks, Inc.
Summit County, No. 16905. On motion for correction of the transcript of docket
and journal entries of the Court of Common Pleas of Summit County. Motion
granted.

95-2591. Sharon Village, Ltd. v. Licking Cty. Bd. of Revision.
Board of Tax Appeals, No. 94-M-1214. On motion for admission pro hac vice by
Robin J. Levine, Esq., for Anthony R. Thompson, Esq. Motion granted.

95-2594. Derby Downs, Ltd. v. Licking Cty. Bd. of Revision.
Board of Tax Appeals, No. 94-M-1215. On motion for admission pro hac vice by
Robin J. Levine, Esq., for Anthony R. Thompson, Esq. Motion granted.

95-2596. Cherry Lee, Ltd. Realty Dev. Co., #3 v. Licking Cty. Bd. of Revision.
Board of Tax Appeals, Nos. 94-M-1325 and 94-M-1326. On motion for admission pro
hac vice by Robin J. Levine, Esq., for Anthony R. Thompson, Esq. Motion
granted.

96-221. State v. Gillard.
Stark County, No. 95CA257. On motion to remand and on motion for stay of
execution. Motions denied.
Stratton, J., dissents.

96-372. State v. Lester.
Hamilton County, No. C-9500451. On motion for bail. Motion denied.

96-423. State v. Biros.
Trumbull County, No. 91-T-4632. On motion for leave to file delayed appeal.
Motion granted.

96-460. State v. Voorhies.
Guernsey County, No. 94CA8. On motion for stay of execution. Motion denied.

96-471. State v. Toriello.
Summit County, Nos. 17415 and 17507. On review of order certifying a conflict.
The court determines that a conflict exists; sua sponte, cause held for the
decision in 95-1377 and 95-1466, State v. Gustafson, Mahoning County, No. 94
C.A. 232; briefing schedule stayed.

96-487. State v. West.
Montgomery County, No. 13321. On motion for leave to file delayed appeal.
Motion denied.

96-529. DePalmo v. DePalmo.
Stark County, No. 95CA0224. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated in the court of appeals' Judgment Entry Certifying Conflict, filed February 28, 1996:

"Upon Motion by Appellant, and pursuant to Ohio Appellate Rule 25, this Court hereby certifies a conflict to the Ohio Supreme Court with the Third and Twelfth Appellate Districts upon the issue of whether a Trial Court may modify an existing child support arrangement under which the custodial parent assumes sole responsibility for the support of the children when there is no finding under the following dual threshold test:

"(A) the supporting custodial parent's circumstances have changed to the extent that that parent can no longer provide the total amount reasonable for the support of the children, or

"(B) the noncustodial parent's circumstances have changed substantially and the trial court in its discretion finds it is in the best interest of the children to receive support from that parent.

"See *Anderkin v. Lansdell* (1992), 80 Ohio App.3d 687 [610 N.E.2d 570] (Paragraph 2 of Syllabus). The Third and Twelfth Appellate Districts require such a finding while this Fifth Appellate District does not require this finding.

"Accordingly, because there exists a conflict among the Ohio appellate districts on this issue, it is hereby Ordered that this case be certified to the Ohio Supreme Court as in conflict with decisions of the Third and Twelfth Appellate Districts."

96-563. Wiley v. Gibson.
Hamilton County, No. C-950359. On motion for emergency relief. Motion denied.

96-677. State v. Smith.
Butler County Court of Common Pleas, No. CR95050471. On motion for stay of execution. Motion granted.

DISCRETIONARY APPEALS ALLOWED

95-2427. Lewis v. Trimble.
Greene County, No. 95CA37.
Pfeifer, Cook and Stratton, JJ., dissent.

95-2561. Clermont Cty. ADAMH Boards v. Hogan.
Clermont County, Nos. CA94-09-074, CA94-10-079, CA94-10-080 and CA94-10-082. On discretionary appeal and cross-appeal. Appeals allowed.
Resnick and Pfeifer, JJ., dissent.

95-2635. McClosky v. Regal Mining, Inc.
Carroll County, No. 650.
Moyer, C.J., dissents.

95-2649. Columbus v. Fabrizio.
Franklin County, No. 95APC06-705. Sua sponte, cause held for the decision in 95-1377 and 95-1466, *State v. Gustafson*, Mahoning County, No. 94 C.A. 232; briefing schedule stayed.

Stratton, J., not participating.

96-59. Olander v. Nationwide Mut. Ins. Co.
Franklin County, No. 95APE03-272. Sua sponte, cause held for the decision in 94-2569, Cole v. Holland, Summit County, No. 16703; briefing schedule stayed.
Pfeifer, J., dissents.

96-73. Snyder v. Nationwide Mut. Ins. Co.
Stark County, No. 1995CA00146. Sua sponte, cause held for the decision in 94-2569, supra; briefing schedule stayed.
Resnick, J., would allow on Proposition of Law No. I only.
Pfeifer, J., dissents.

96-101. Nottingham v. Allstate Ins. Co.
Stark County, No. 1995CA00068. Sua sponte, cause held for the decision in 94-2569, supra; briefing schedule stayed.
Pfeifer, J., dissents.

DISCRETIONARY APPEALS NOT ALLOWED

95-2426. State v. Weaver.
Wood County, No. WD95059.
Stratton, J., dissents.

95-2443. Univ. Circle Research Ctr. Corp. v. Galbreath Co.
Cuyahoga County, No. 68038.

95-2467. Foster Wheeler Enviresponse, Inc. v. Franklin Cty. Convention Facilities Auth.
Franklin County, No. 95APE04-401.
F.E. Sweeney and Stratton, JJ., dissent.

95-2540. State v. Day.
Mahoning County, No. 94 C.A. 119.

95-2564. Jennings v. Trimble.
Jackson County, No. 94CA754.
Resnick and F.E. Sweeney, JJ., dissent.

95-2567. Traux v. EM Industries, Inc.
Hamilton County, No. C-940623.
Moyer, C.J., Cook and Stratton, JJ., dissent.

95-2599. State v. Mootispaw.
Fayette County, No. CA95-03-008.

95-2600. Gaffney v. Powell.
Hamilton County, No. C-940962.
Stratton, J., not participating.

95-2614. Apesos v. Kemper Mechanical Serv., Inc.
Montgomery County, Nos. 14980 and 15129.
Cook, J., dissents.

95-2616. In re Guardianship of Standel.
Summit County, No. 17199.

Moyer, C.J., and Resnick, J., dissent.

95-2620. Soc. Bank, NA v. Kuntz.
Montgomery County, No. CA 15056.
Resnick, J., not participating.

95-2624. In re Bowens.
Ashtabula County, Nos. 92-A-1711 and 92-A-1717.

95-2634. Schneider v. Steinbrunner.
Montgomery County, No. 15257.
Moyer, C.J., and Cook, J., dissent.

95-2636. Lacey v. Lacey.
Cuyahoga County, No. 68405.

95-2644. Phelps v. Fowler.
Cuyahoga County, No. 68620.

95-2663. State v. Wilson.
Lake County, No. 94-L-018.

95-2672. Performance Ford Club of Am., Inc. v. Performance Ford Club of Am.,
Cent. Ohio Region, Inc.
Franklin County, Nos. 95APE05-556 and 95APE05-557.

95-2675. Brooks v. Brooks.
Franklin County, No. 95APF03-381.

96-105. State v. Kimbro.
Lorain County, No. 94CA005958.

96-114. Flach v. Marion Cty. Bd. of Commrs.
Marion County, No. 9-95-28.

RECONSIDERATION DOCKET

94-1063. Gladon v. Greater Cleveland Regional Transit Auth.
Cuyahoga County, No. 64029. Reported at 75 Ohio St.3d 312, ___ N.E.2d ___. On
motion for reconsideration. The motion fails for want of four votes on the
following vote:

Moyer, C.J., Nader and Cook, JJ., vote to deny.

Douglas, Resnick and Pfeifer, JJ., vote to grant.

Stratton, J., not participating.

Robert A. Nader, J., of the Eleventh Appellate District, sitting for F.E.
Sweeney, J.

94-1448. Wireman v. Keneco Distributors, Inc.
Wood County, No. 93WD078. Reported at 75 Ohio St.3d 103, ___ N.E.2d ___. On
motion for reconsideration. Motion denied.

Moyer, C.J., and Cook, J., dissent.

Stratton, J., not participating.

94-1600. Erb v. Erb.
Cuyahoga County, Nos. 65666 and 65667. Reported at 75 Ohio St.3d 18, ___ N.E.2d
___. On motion for reconsideration. Motion denied.

Resnick, J., dissents.
Stratton, J., not participating.

94-1871. State v. Brooks.

Summit County, No. 16192. Reported at 75 Ohio St.3d 148, ___ N.E.2d ___. On motion to supplement record and on motion for reconsideration. The motions fail for want of four votes on the following vote:

Tyack, Pfeifer and Grady, JJ., vote to deny.

Moyer, C.J., Douglas and F.E. Sweeney, JJ., vote to grant.

Stratton, J., not participating.

G. Gary Tyack, J., of the Tenth Appellate District, sitting for Resnick,
J.

Thomas J. Grady, J., of the Second Appellate District, sitting for Cook,
J.

94-1897. Brecksville v. Cook.

Cuyahoga County, No. 65766. Reported at 75 Ohio St.3d 53, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Stratton, J., not participating.

94-2141. Robb v. Chagrin Lagoons Yacht Club, Inc.

Lake County, No. 93-L-064. Reported at 75 Ohio St.3d 264, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Resnick and F.E. Sweeney, JJ., dissent.

Stratton, J., not participating.

94-2400. Hacker v. Dickman.

Erie County, No. E-93-65. Reported at 75 Ohio St.3d 118, ___ N.E.2d ___. On motion for reconsideration. The motion fails for want of four votes on the following vote:

Moyer, C.J., Farmer and Cook, JJ., vote to deny.

Douglas, F.E. Sweeney and Pfeifer, JJ., vote to grant.

Stratton, J., not participating.

Sheila G. Farmer, J., of the Fifth Appellate District, sitting for
Resnick, J.

95-42. State v. Wogenstahl.

Hamilton County, No. C-930222. Reported at 75 Ohio St.3d 344, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Stratton, J., not participating.

95-112. State v. Benge.

Butler County, No. CA93-06-116. Reported at 75 Ohio St.3d 136, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Stratton, J., not participating.

95-202. State v. Hill.

Hamilton County, No. C-910916. Reported at 75 Ohio St.3d 195, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Stratton, J., not participating.

95-510. Meijer, Inc. v. Montgomery Cty. Bd. of Revision.

Board of Tax Appeals, Nos. 93-M-731, 93-M-732 and 93-M-733. Reported at 75 Ohio St.3d 181, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Stratton, J., not participating.

95-553. State ex rel. Neff v. Corrigan.
Cuyahoga County, No. 67421. Reported at 75 Ohio St.3d 12, ___ N.E.2d ___. On motion for reconsideration. Motion denied; on motions to consolidate and to strike. Motions denied.

Stratton, J., not participating.

95-587. Time Warner AxS v. Pub. Util. Comm.
Public Utilities Commission, No. 93-487-TP-ALT. Reported at 75 Ohio St.3d 229, ___ N.E.2d ___. On motion for reconsideration and/or clarification by Ameritech Ohio. Motion denied.

Stratton, J., not participating.

95-588. AT&T Communications of Ohio, Inc. v. Pub. Util. Comm.
Public Utilities Commission, Nos. 93-487-TP-ALT and 93-576-TP-CSS. Reported at 75 Ohio St.3d 229, ___ N.E.2d ___. On motion for reconsideration and/or clarification by Ameritech Ohio. Motion denied.

Stratton, J., not participating.

95-589. MCI Telecommunications Corp. v. Pub. Util. Comm.
Public Utilities Commission, Nos. 93-487-TP-ALT and 93-576-TP-CSS. Reported at 75 Ohio St.3d 229, ___ N.E.2d ___. On motion for reconsideration and/or clarification by Ameritech Ohio. Motion denied.

Stratton, J., not participating.

95-1165. State v. Wogenstahl.
Hamilton County, No. C-930222. Reported at 75 Ohio St.3d 273, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Stratton, J., not participating.

95-1330. State v. Esparza.
Lucas County, No. L-84-225. Reported at 74 Ohio St.3d 660, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Resnick and Stratton, JJ., not participating.

95-2005. State v. Colwell.
Hamilton County, No. C-930806. Reported at 74 Ohio St.3d 631, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Stratton, J., not participating.

95-2238. Cedar Fair, L.P. v. Weinstein.
Erie County, No. E-95-040. Reported at 75 Ohio St.3d 1411, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

Resnick and Stratton, JJ., not participating.

95-2263. State ex rel. Richard v. Seidner.
Lorain County, No. 95CA006193. Reported at 75 Ohio St.3d 634, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Stratton, J., not participating.

95-2323. Jocek v. GTE North.
Summit County, No. 17097. Reported at 75 Ohio St.3d 1412, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Resnick and F.E. Sweeney, JJ., dissent.

Stratton, J., not participating.

95-2334. Weber v. Condren.

Cuyahoga County, No. 68268. Reported at 75 Ohio St.3d 1412, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Douglas, J., dissents.

Stratton, J., not participating.

95-2536. Cleveland Bar Assn. v. Fox.

Reported at 74 Ohio St.3d 585, ___ N.E.2d ___. On motion for reconsideration and remand. Motion denied.

F.E. Sweeney and Stratton, JJ., not participating.

96-309. State v. Plassman.

Fulton County, No. F-95-025. Reported at 75 Ohio St.3d 1409, ___ N.E.2d ___. On motion for reconsideration. The motion fails for want of four votes on the following vote:

Douglas, Resnick and F.E. Sweeney, JJ., vote to deny.

Moyer, C.J., Pfeifer and Cook, JJ., vote to grant.

Stratton, J., not participating.